LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

230 PARK AVENUE, SUITE 1160
NEW YORK, NEW YORK 10169

(212) 850-6100
FACSIMILE (212) 850-6299

1050 17TH STREET, N.W., SUITE 800, WASHINGTON, D.C. 20036-5514
(202) 508-1100 FACSIMILE (202) 861-9888

2112 WALNUT STREET, THIRD FLOOR, PHILADELPHIA, PA 19103
(215) 988-9778 FACSIMILE (215) 988-9750

SETH D. BERLIN
JAY WARD BROWN
JAMES E. GROSSBERG*
ASHLEY I. KISSINGER*
ELIZABETH C. KOCH*
LEE LEVINE*
ROBERT PENCHINA
CELESTE PHILLIPS*
DAVID A. SCHULZ
NATHAN SIEGEL
GAYLE C. SPROUL
MICHAEL D. SULLIVAN*

NICOLE A. AUERBACH
JEANETTE MELENDEZ BEAD*
MICHAEL BERRY*
CHAD R. BOWMAN*
AUDREY CRITCHLEY*
THOMAS CURLEY*
ADAM J. RAPPAPORT*
ALIA L. SMITH
*NOT ADMITTED IN NEW YORK

WRITER'S DIRECT DIAL
212-850-6103

September 16, 2005

Elizabeth Wolstein, Esq.
Assistant United States Attorney
U.S. Department of Justice
Southern District of New York
86 Chambers Street
New York, NY 10007

Re: Associated Press v. Department of Defense, No. 05 Civ. 5468

Dear Ms. Wolstein:

Associated Press v. United States Department of Defense Doc. 23 Att. 3

I am writing to follow up on your July 8, July 22, and August 5, 2005 the responses to AP's Freedom of Information Act requests that were made by the Department of Defense (DOD) pursuant to the June 29, 2005 Stipulation and Order ("Stipulation") in this action. We have several questions concerning the adequacy of those responses.

First, the November 16, 2004 AP request sought copies of "documents sufficient to identify the number of detainees transferred or released from Guantanamo Bay who had been treated for medical problems during their detention." However, the only response to this request was the statement in the July 22 letter from Heidi Wendel stating that at least 231 of the 234 released or transferred detainees have received medical treatment beyond routine physical examinations. This statement must have been based on documents in the government's possession, yet those documents were not provided. AP did not request *all documents* on this issue, but it requested to see actual documents that would identify the number of detainees treated. The representation by Ms. Wendel does not satisfy AP's request. We request that DOD copy and provide the documents used to make that representation, in accordance with the terms of the Stipulation.

Second, the January 18, 2005 AP request sought transcripts of all testimony given at the Administrative Review Boards ("ARB"). In response, DOD produced pages 385-1243 on July 8, and stated that these documents "constitute the entire universe of documents" responsive to this request. However, pages 944-1242 of the production provide 125 discrete documents labeled "DMO Exhibit 1," which we understand to be a standard exhibit entered at each hearing by the designated military officer presenting information to the ARB. Pages 385-943 contain transcripts of only 84 ARB hearings, suggesting that there were perhaps 41 additional hearings for which transcripts were not provided. Please explain this discrepancy and confirm whether all ARB transcripts were located and produced.

Third, the January 18, 2005 AP request sought copies of "all written statements provided by any detainee," and "all documents that have provided by any detainee . . . to their assigned personal representatives." Your July 8 letter states that pages 385-1243 represent all documents responsive to these requests. Again, however, it appears that there may be additional documents that were not produced. Some of the transcripts provided attach documents labeled "Exhibit EC-C," which are the detainees' responses to the unclassified allegations, prepared with the assistance of their Assisting Military Officer. Four of these exhibits are mentioned in the transcripts, but are not included in the documents produced. The four exhibits are mentioned on page 616, 718, 741, 872.

Finally, the production suggests that a few pages may have inadvertently been omitted. Page 390 was not produced; page 435 references page 2 of 7, but page 1 of 7 was not produced; and, page 504 similarly starts on page 2 of 3, without producing page 1 of 3.

We ask that you search for and provide copies of these missing documents. Thank you for your attention to this matter.

Very truly yours

David A. Schulz

cc: David H. Tomlin, Esq.
Associated Press